

CARDELL NEWTON,

No. C 15-03217 WHA

Plaintiff,

V.

ORDER DISMISSING CASE

SAN QUENTIN STATE PRISON,

Defendant.

Pro se plaintiff in the above-captioned matter has already paid the filing fee, and he is no longer in prison, so his complaint is not subject to any pre-screening process. Defendant has not been served. Plaintiff was ordered to show cause why the above-captioned matter should not be dismissed as duplicative of the complaint in *Newton v. San Quentin State Prison*, No. 13-3719, ECF No. 9 (Dec. 12, 2013) (Judge Joseph Spero), which was dismissed with prejudice. In both cases, plaintiff alleged that he was deprived of his constitutional rights because defendant San Quentin State Prison delayed in mailing legal documents necessary to his appeal of his habeas petition, and his appeal was subsequently denied. Plaintiff's response to the order to show cause herein restates that allegation. Plaintiff also notes that defendant denied him access to the law library, however, that fact is not alleged in his complaint and pertains to the same alleged injury, namely, the denial of his appeal.

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1 This order finds that this case is duplicative of plaintiff's 2013 case, which was already
2 resolved on the merits, so it is barred by *res judicata*. Accordingly, this case is hereby
3 **DISMISSED**. The Clerk shall **CLOSE THE FILE**.

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5 **IT IS SO ORDERED.**

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7 Dated: September 22, 2015.

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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE